

BULLETIN 99-1

March 26, 1999

This bulletin responds to anticipated questions resulting from the recently announced cable acquisitions affecting franchises currently held by Time Warner Cable and Cox Communications, Inc. in eastern Massachusetts.

As you know, last month MediaOne Group, Inc. and Time Warner announced that they had entered into an agreement authorizing MediaOne to acquire the Time Warner cable franchises in eastern Massachusetts. Also, earlier this month MediaOne and Cox reached an agreement that MediaOne would acquire all of the Cox systems in Massachusetts.

On March 22, 1999, MediaOne and Philadelphia-based Comcast Corporation announced that they had entered into a merger agreement. If the parties proceed with this agreement, it would constitute a legal transfer of all MediaOne cable franchises to Comcast, *including the 31 eastern Massachusetts franchises currently held by Time Warner and the nine Massachusetts franchises currently held by Cox*, which are now subject to pending transfer proceedings. Importantly, while the agreement prohibits MediaOne from soliciting competing acquisition proposals, it has 45 days to accept a superior proposal, subject to payment of a \$1.5 billion fee to Comcast.

In light of the close timing of these three agreements, local officials in the affected communities may be asking themselves why they now need to conduct a full and complete Time Warner/MediaOne or Cox/MediaOne transfer review. We recognize that this is a valid concern, given that issuing authorities may well be called upon to initiate yet another review process on the heels of the first to evaluate a second transfer proposal in connection with the MediaOne/Comcast agreement. There are four reasons why we *strongly* advise communities to do so.

First, and perhaps most critically, the issuing authority has the legal right to evaluate and issue a decision on the pending transfers, but you may only do so if you comply with strict federal and state procedures and time frames for this decision-making process. *Under federal law, if you fail to render a final decision on the pending transfer within 120 days of your receipt of the transfer application, you effectively waive your legal right to do so.* Furthermore, the process you conduct is subject to our procedural rules,

including the requirement that you hold a public hearing on the transfer within 60 days of receiving an application.

Second, because the MediaOne/Comcast agreement is subject to a 45 day period within which MediaOne may accept a better offer than that tendered by Comcast, MediaOne has advised us that no MediaOne/Comcast transfer applications will be issued until May 6, 1999, at the earliest. By that time, the Time Warner/MediaOne and the Cox/MediaOne transfer review processes should be well underway, if not completed, in all the affected communities. More importantly, this 45-day provision at least raises the question whether Comcast or indeed some other company will ultimately acquire MediaOne's Massachusetts cable franchises, subject to local approval under state law.

Third, issuing authorities should bear in mind that you now have the legal right to gather information, hold a public hearing, evaluate and render a final decision on the transfer proposal currently pending before you. But you are also obligated under federal and state law to do so *strictly on the merits of the pending transfer*, without anticipating or incorporating into your evaluation deals that may or may not come to fruition thereafter. We realize that this may strike some of you as costly and impractical. Nevertheless, it is the law.

Finally, if you decide to approve the pending transfer, you will have an opportunity to conduct a separate and distinct legal review of any subsequent acquisition of MediaOne, provided it constitutes a legal transfer of ownership or control of the franchise in your community. At that point, you will have the right to evaluate and render a decision on the merits of that proposal.

The Cable Division stands ready to assist the affected municipalities on the transfer issues raised above. Should you need general information, please call Gordon Champion, our Municipal Liaison, at 617-727-6925. If you have specific legal questions on the transfer issue, please contact the Division's General Counsel, Kevin Wrege, at the same number.